

MONTANA LEGISLATIVE HISTORY

Chapter 414 1999

Bill H _____ S 486 Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 3-22 ☒ c

3-26 ☒ c

_____ ☐ c

_____ ☐ c

Date Out _____ ☐ c

S. Committee on Judiciary

Hearing Date(s) 2-17 ☒ c

2-18 ☒ c

_____ ☐ c

_____ ☐ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

SENATE BILLS AND RESOLUTIONS

269

SB 485 Introduced by Mesaros

LC1746 Drafter: Maly

Submit the Mortgage Lender Biennial Renewal Fee to the Electorate;...

2/02	Fiscal Note Needed		
2/13	Introduced and 1st Reading		
2/13	Referred to Business and Industry		
2/19	Hearing		
2/19	Committee Executive Action--Bill Passed	7	0
2/20	Committee Report--Bill Passed		
2/23	2nd Reading Passed	49	0
2/24	3rd Reading Passed	47	2
	Transmitted to House		
3/02	Referred to Business and Labor		
3/18	Hearing		
3/18	Tabled in Committee		
	Died in Standing Committee		

SB 486 Introduced by Halligan, et al.

LC1420 Drafter: Lane

Revise the Laws Relating to Parenting Matters Between Natural Parents and Third Parties;...

2/13	Introduced and 1st Reading		
2/13	Referred to Judiciary		
2/17	Hearing		
2/18	Committee Executive Action--Bill Passed as Amended	8	0
2/19	Committee Report--Bill Passed as Amended		
2/22	2nd Reading Passed	49	0
2/23	3rd Reading Passed	49	0
	Transmitted to House		
3/02	Referred to Judiciary		
3/22	Hearing		
3/26	Committee Executive Action--Bill Concurred as Amended	17	2
3/27	Committee Report--Bill Concurred as Amended		
3/31	2nd Reading Concurred as Amended	98	2
4/01	3rd Reading Concurred	97	2
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	50	0
4/09	3rd Reading Passed as Amended by House	50	0
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/15	Signed by President		
4/16	Signed by Speaker		
4/16	Transmitted to Governor		
4/21	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 414		
	Effective Date: 10/01/1999 - All Sections		

SB 487 Introduced by Roush, et al.

LC1547 Drafter: Heiman

Clarify That Skidable, Portable, or Movable Oil Field Equipment Is Class Eight Equipment;...

Senate BILL NO. 486

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO PARENTING MATTERS BETWEEN NATURAL PARENTS AND THIRD PARTIES; AUTHORIZING COURTS TO MAKE A DETERMINATION THAT A PARENTAL INTEREST OR VISITATION RIGHT MAY BE AWARDED TO A THIRD PARTY WHEN THE PARENT'S CONDUCT IS CONTRARY TO A CHILD-PARENT RELATIONSHIP AND THE DETERMINATION SERVES THE BEST INTERESTS OF THE CHILD; AND AMENDING SECTIONS 40-4-211 AND 40-4-221, MCA."

WHEREAS, it is undisputed that parents have a fundamental right to autonomy in child-rearing decisions; and

WHEREAS, the United States Supreme Court has long recognized a constitutionally protected interest of parents to raise their children without state interference; and

WHEREAS, the liberty interest guaranteed by the 14th amendment to the United States Constitution includes freedom to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home, and to bring up children; and

WHEREAS, the freedom of personal choice in matters of family life is a fundamental liberty interest protected by the 14th amendment to the United States Constitution; and

WHEREAS, the integrity of the family unit has found protection in the due process clause of the 14th amendment, the equal protection clause of the 14th amendment, and the 9th amendment; and

WHEREAS, the Montana Supreme Court has recognized the constitutionally protected rights of natural parents to parent their children; and

WHEREAS, the Montana Legislature recognizes that the careful protection of parental rights is not merely a matter of legislative grace but is constitutionally required; and

WHEREAS, the Montana Constitution recognizes the constitutional rights of children; and

WHEREAS, Article II, section 15, of the Montana Constitution provides that the rights of persons under 18 years of age shall include but not be limited to all the fundamental rights of Article II, unless specifically precluded by law which enhances the protection of the persons; and

WHEREAS, these fundamental rights include but are not limited to freedom; pursuing life's basic

1 necessities, enjoying and defending life and liberty, and seeking safety, health, and happiness in lawful
2 ways and the rights of individual dignity and privacy; and

3 WHEREAS, the Legislature finds that there are times when the rights of parents must be balanced
4 against the rights of children; and

5 WHEREAS, the Legislature further finds that the courts need direction and authority to consider
6 the best interests of children in parenting and visitation matters; and

7 WHEREAS, the Legislature finds it is appropriate to establish standards and direction for resolving
8 these issues.

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 Section 1. Section 40-4-211, MCA, is amended to read:

13 "40-4-211. Jurisdiction -- commencement of parenting proceedings. (1) A court of this state
14 competent to decide parenting matters has jurisdiction to make a parenting determination by initial or
15 amended decree if:

16 (a) this state:

17 (i) is the home state of the child at the time of commencement of the proceedings; or

18 (ii) had been the child's home state within 6 months before commencement of the proceedings
19 and the child is absent from this state because of the child's removal or retention by any person and a
20 parent or person acting as parent continues to live in this state; or

21 (b) it is in the best interest of the child that a court of this state assume jurisdiction because:

22 (i) the child and the parents or the child and at least one contestant have a significant connection
23 with this state; and

24 (ii) there is available in this state substantial evidence concerning the child's present or future care,
25 protection, training, and personal relationships; or

26 (c) the child is physically present in this state and:

27 (i) has been abandoned; or

28 (ii) it is necessary in an emergency to protect the child because the child has been subjected to
29 or threatened with mistreatment or abuse or is neglected or dependent; or

30 (d) (i) no other state has jurisdiction under prerequisites substantially in accordance with

1 subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that
2 this state is the more appropriate forum to determine parenting of the child; and

3 (ii) it is in the child's best interest that the court assume jurisdiction.

4 (2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of
5 the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state
6 to make a parenting determination.

7 (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to
8 determine parenting of the child.

9 (4) A parenting plan proceeding is commenced in the district court:

10 (a) by a parent, by filing a petition:

11 (i) for dissolution or legal separation; or

12 (ii) for parenting in the county in which the child is permanently resident or found; or

13 (b) by a person other than a parent if the person has established a child-parent relationship with
14 the child, by filing a petition for parenting in the county in which the child ~~is permanently resident~~ resides
15 or is found, but only if the child is not physically residing with one of the child's parents.

16 (5) Notice of a parenting proceeding must be given to the child's parent, guardian, caretaker,
17 those persons with whom the child is physically residing, and all other contestants, who may appear, be
18 heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention
19 of other interested parties.

20 (6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that exists
21 or did exist, in whole or in part, within the 12 months preceding the filing of an action under this section,
22 in which a person provides or provided for the physical needs of a child by supplying food, shelter, and
23 clothing and provides or provided the child with necessary care, education, and discipline and which
24 relationship continues or existed on a day-to-day basis through interaction, companionship, interplay, and
25 mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs."

26
27 **Section 2.** Section 40-4-221, MCA, is amended to read:

28 "40-4-221. Determination of child's care upon death of parent. (1) Upon the death of a parent,
29 one or more parties named in subsection (2) may request a parenting plan hearing. The surviving parent
30 must be a party in any proceeding brought under this section.

(2) Upon the death of a parent, any of the following parties may request a parenting plan hearing:

(a) the natural parent;

(b) the surviving spouse of the deceased parent;

(c) a person nominated by the will of the deceased parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) a person who has established with the child a child-parent relationship, as defined in

40-4-211(6);

~~(f)~~(g) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of a parenting plan is governed by this part."

NEW SECTION. Section 3. Parenting and visitation matters between natural parent and third party. (1) It is the policy of the state of Montana:

(a) to recognize the constitutionally protected rights of parents and the integrity of the family unit;

(b) to recognize a child's constitutionally protected rights, including all fundamental rights unless those rights are specifically precluded by laws that enhance their protection; and

(c) to ensure that the best interests of the child are met in parenting proceedings.

(2) In cases when a nonparent seeks a parental interest in or visitation with a child, the provisions of this chapter apply unless a separate action has been initiated under Title 41, chapter 3.

(3) The legislature finds that while it is in the best interests of a child to maintain a relationship with a natural parent, a natural parent's inchoate interest in the child requires constitutional protection only when the parent has demonstrated a timely commitment to the responsibilities of parenthood. A parent's constitutionally protected interest in the parental control of a child should yield to the best interests of the child when any of the following exist:

(a) the parent is proven to be unfit;

(b) the parent engages in conduct constituting abuse, neglect, or abandonment of the child; or

(c) the parent's conduct or ability to parent, while not adjudicated as unfit, abusive, or neglectful, is contrary to the parent-child relationship.

(4) (a) If conduct by the natural parent that is contrary to the parent-child relationship is shown

1 by clear and convincing evidence, a court may award a parental interest to a person other than a natural
2 parent when the award serves the best interest of the child. It is not necessary for the court to find a
3 natural parent unfit before awarding a parental interest to a third party under this section.

4 (b) For purposes of an award of visitation rights under this section, a court may make an award
5 based on the best interests of the child without meeting the clear and convincing evidence standard.

6 (5) A court may award a parental interest or visitation to a nonparent third party, as set forth in
7 this section, when the award serves the best interests of the child and any one of the following exists:

8 (a) the third party has provided the care for the child for a significant period of time;

9 (b) the third party is a de facto or psychological parent to the child; or

10 (c) the special relationship between the third party and the child resulted from a natural parent's
11 action or inaction that was contrary to the best interests of the child, including but not limited to
12 voluntarily permitting the child to remain continuously in the care of others for a significant period of time
13 so that the others stand in loco parentis to the child or failing to provide support for the child.

14

15 NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an
16 integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2, apply to
17 [section 3].

18

- END -

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

- SB 472** SPONSOR: Wells, Jack SHORT TITLE: Revise criminal code provisions relating to machine guns and silencers
REFERRED ON: 02/13/1999 HEARD ON: 02/18/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 7 - 1
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned
-
- SB 473** SPONSOR: Doherty, Steve SHORT TITLE: Generally revise laws relating to estates, trusts, & fiduciary relationships
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 02/13/1999 HEARD ON: 02/17/1999
EXECUTIVE ACTION: 02/17/1999 Bill Passed -- VOTE: 8 - 0
FINAL DISPOSITION 04/12/1999 Chapter Number Assigned
-
- SB 476** SPONSOR: Bishop, Al SHORT TITLE: Revise laws relating to construction liens
REFERRED ON: 02/13/1999 HEARD ON: 02/17/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned
-
- SB 477** SPONSOR: Mahlum, Dale SHORT TITLE: Limit employer liability for ride sharing arrangements
REFERRED ON: 02/13/1999 HEARD ON: 02/17/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 7 - 1
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- SB 481** SPONSOR: Thomas, Fred SHORT TITLE: Extend custody powers to juvenile home arrest officers
REFERRED ON: 02/13/1999 HEARD ON: 02/18/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed -- VOTE: 8 - 0
FINAL DISPOSITION 04/16/1999 Chapter Number Assigned
-
- SB 486** SPONSOR: Halligan, Mike SHORT TITLE: Revise law relating to parenting between natural parent and third parties
REFERRED ON: 02/13/1999 HEARD ON: 02/17/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- SB 503** SPONSOR: Ellingson, Jon SHORT TITLE: Revise procedure for imposing death penalty
REFERRED ON: 02/16/1999 HEARD ON: 02/18/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 6 - 1
FINAL DISPOSITION 03/29/1999 (H) 2nd Reading Concur Motion Failed; Vote: 43 - 55
-

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 17, 1999 at 8:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 450, 2/12/1999; SB 451,
2/12/1999; SB 456, 2/12/1999;
SB 473, 2/12/1999; SB 476,
2/12/1999; SB 477, 2/12/1999;
SB 486, 2/12/1999
Executive Action: SB 473; SB477; SB390; SB461;
SB463; SB303

information it puts them at a higher level of liability than they were before. Most employers are going to start running these checks because the information is now available to them. The time delay is going to increase substantially if they don't have the authorization to take fees from this. Most of the delays right now are at the federal level, but this is going to change.

SEN. BARTLETT said if Montana is expecting to double and triple in background checks, what is going to be coming out of California, Texas, Florida, etc. It could take them five years to process some of these checks. **Mr. Fasbender** said that is true it is going to increase, but at the same time a number of states are already doing this and it won't go up on the federal level as much.

SEN. BARTLETT asked if in HB 590 they have put in provisions to notify the applicants whose fingerprints are taken and checked of the limitations on the use of that information and their right to privacy. **Mr. Fasbender** said this has been addressed. The perspective employer fills out a notice and they have ample time to contest it if there are some changes, etc.

{Tape : 2; Side : B; Approx. Time Counter : 11:16 a.m.}

SEN. BARTLETT said she can see some benefits to these provisions.

SEN. HOLDEN referred to the fiscal note. He thought the department could take the money out of their budget to cover half a person. **Mr. Fasbender** said the fiscal note only applies to health care workers. They anticipate it will take a full FTE just to do the checks for the school and another for nursing homes. Three people will probably be necessary to take care of this.

CHAIRMAN GROSFIELD said he would like to see the amendments for HB 590 and federal legislation for this.

{Tape : 3; Side : A; Approx. Time Counter : 11:23 a.m.}

HEARING ON SB 486

Sponsor: **SEN. MIKE HALLIGAN, SD 34, Missoula**

Proponents:

Betty Waddell, MT Assoc. of Churches

Opponents: None

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, referred to the first seven 'whereas' of the bill reinforcing Supreme Court decisions that have established the fundamental rights of parents to raise their children. This bill attempts to define third party rights when it comes to parental relationships that have been ordered by the court. There is no attempt to interfere with stable families. He said they have tried to define third party parental roles without upsetting the balance of the fundamental right to parent children. He said they need to pass laws to protect children and the Montana Constitution addresses this. He discussed the language on Page 3, line 13. He said he doesn't know if other states are doing this, but they are trying. There are situations where the parents are not necessarily unfit, but there are situations where grandparents, uncles, aunts, and other third parties are raising children. There is a need to address the child/parent relationship in the areas of care, education, physical needs, shelter, etc. If these types of relationships have been established then the question arises as to when the court can award the ability for someone else to parent besides the natural parent. The key is they are not terminating anybody's parental rights. This is addressed on Page 4, subsection 3. If the conduct of a natural parent is contrary to the parent/child relationship and it is shown by clear and convincing evidence, the court may award parental interest other than the natural parents. He read subsection 5, page 5. He said they are trying to address the parents voluntary conduct that has allowed someone else to parent their child. He used the example of a grandmother raising her daughter's three children because the mother has abandoned them and the father is in the Montana State Prison. They don't want the state to step in, they want extended families who have provided care to continue those parental relationships. It is difficult to balance the parent's Constitutional rights with the children's Constitutional rights. He turned in a letter by Judge Larson. EXHIBIT(6)

Proponents' Testimony:

Betty Waddell, MT Assoc. of Churches, said their primary concern is for children and the need to be protected. A child's need for relationship and belonging should be their primary concern. Children are best raised in a family. She said they no longer have nuclear families, 50 percent of the children, from birth to 18 at some time live with single parents. Families are not necessarily dysfunctional they are just different. Many third parties have children that are not of their blood, but are taking care of them. She said at one point her daughter's boyfriend was kicked out of his home and he lived with them for over a year.

She said if something would have happened to his parents they may have wanted a document that identified them as the custodial parents. Many rural people also board their children in town and if something happened to the natural parents the custodial parents might want to be identified.

{Tape : 3; Side : A; Approx. Time Counter : 11:35 a.m.}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. GRIMES said on page 5, line 12, this might have the opposite effect. Parents may decide to leave their children at home alone rather than giving them to somebody else knowing that they may potentially lose parental rights. **SEN. HALLIGAN** said he had not thought of that alternative effect. Native American communities use the extended families all the time and there is no attempt to try and upset that balance. He said his wife's parents provide care for their children two hours everyday after school. He is willing to look at language that may tighten this.

SEN. GRIMES said on page 4, he doesn't understand what lines 26-29 means. He is worried about a father from the past coming in and proving the other parent unfit, when simply they are trying to work two jobs and care for the children. **SEN. HALLIGAN** said unfit has been dealt with in the child abuse, neglect proceedings. He said they are still trying to deal with the parental control and when it yields to the child's fundamental right to a family unit.

CHAIRMAN GROSFIELD asked on page 5, line 12, what is the significant period of time? **SEN. HALLIGAN** said they put in 12 months so the courts could determine if this is a reasonable time and it could be done on a case by case measure.

CHAIRMAN GROSFIELD said this line says significant period of time so the courts may not think it is twelve months. He certainly doesn't want it to be two weeks, etc. and perhaps this needs to be spelled out. **SEN. HALLIGAN** agreed and that the words "failing to provide support for the child" at the end of that statement needs to be addressed.

CHAIRMAN GROSFIELD asked what kind of scenarios come up if they don't pass this bill. Why do they need this bill to legally establish a parent/child relationship. **SEN. HALLIGAN** said the only avenue now is through the abuse and neglect proceedings. There has to be harm to the child or their health and safety has been affected and in many cases this won't protect the best

interest of the child. If there is extended family who has been caring for children, they should have a separate civil right to be able to go in and argue that they have been parenting and they don't need to have the state interfere in this.

CHAIRMAN GROSFIELD said if he picked up a kid off the street and he provided a happy home life for several years, how does this scenario fit into this bill? **SEN. HALLIGAN** said it is probably kidnapping to do that. You couldn't enroll the child in school if you didn't have some legal authority, etc. In that example the state would probably have to interfere.

CHAIRMAN GROSFIELD said in his example, if this bill passed, would he have some kind of legal documentation to maintain. **SEN. HALLIGAN** said right now if he was the parent and came to get his children he would get them. This bill would give him the custodial right to be awarded parental powers.

SEN. GRIMES said if he took care of somebody's child for a length of time and then he thought there was something going on in the lives of the original parents that may be detrimental, could he have some standing to determine things like where the child should go to school, who they visit, etc.. **SEN. HALLIGAN** said that was correct, the statute allows for a child to be signed over for six months. He said in this case, he could develop the facts necessary for that child/parent relationship if the parents stay gone for an extended period of time.

SEN. GRIMES said this bill is set up in negative circumstances and maybe it could be voluntary in certain cases.

Closing by Sponsor:

SEN. HALLIGAN said they are not trying to terminate parental rights. Extended families are a very positive and stable thing. The language needs to be tighten up and this bill should be passed this session so those interests can start being balanced.

{Tape : 3; Side : A; Approx. Time Counter : 11:51 a.m.}

EXECUTIVE ACTION ON SB 473

Motion/Vote: **SEN. HALLIGAN** moved SB 473 DO PASS. Motion carried 7-0.

EXECUTIVE ACTION ON SB 461

Motion: **SEN. HALLIGAN** moved SB 461 BE TABLED.



CHAMBERS OF
JOHN W. LARSON
DISTRICT COURT JUDGE

STATE OF MONTANA

February 17, 1999

SENATE JUDICIARY COMMITTEE
SENATE NO. 6
DATE 2-17-99
FILE NO. SB 486
FOURTH JUDICIAL DISTRICT
MISSOULA AND MINERAL COUNTIES
MISSOULA COUNTY COURTHOUSE
200 WEST BROADWAY
MISSOULA, MONTANA 59802-4292
(406) 523-4773
(406) 523-4739 FAX

Senator Lorents Grosfield
Chairman, Judiciary Committee
State Capitol
P.O. Box 201701
Helena, MT 59620-1701

RE: Senate Bill 486

Dear Chairman Grosfield, and Members of the Judiciary Committee:

I am writing in support of S.B. 486 which would permit District Court Judges to award custody of children to third parties, when placement of the child with a biological parent is detrimental to the child, or the biological parent has failed to timely commit to the responsibilities of parenthood.

S.B. 486 allows District Court to examine the relevant facts in a very limited situations and balance both the constitutional rights of parents and the constitutional rights of children to insure that children are not exposed to obvious risk and harm. In several recent cases, children have been removed from the family environment where they have been thriving, because of the apparent inability to consider the children's constitutional rights to safety and nurturance. Unfortunately, given my court schedule, I was unable to appear in person at this morning's hearing to testify in support of the bill, but will provide copies of two cases to the committee secretary upon my arrival this afternoon, for your review. These cases, In re A.R.A., 277 Mont. 66, 919 P.2d 388, and Girard v. Williams, Supreme Court No. 97-060, portray the egregious result that can occur when Court is unable to balance the interests of parents and children and must ignore the best interest of the child.

I urge your passage of S.B. 486.

Sincerely,

John W. Larson
JOHN W. LARSON
District Judge

15

DATE _____

DATE _____

2/17/99

[illegible]

DATE 2/17/99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 450, SB 451, SB 456,
SB 473, SB 476, SB 477 SB 486

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
JOHN CADBY	443 4121	MT BANKERS	SB 476	✓	
Belinda Faragher	782-3123	St. Lyndn	SB 450		
Mike Foster	442-4162	MT Contractors' Assoc.	SB 476	✓	
NOEL LARRIVEE	523-4944	MRTMA	SB 477	✓	
G. Van Housen	2-0230	MHP	SB 456	✓	
BETH WADDELL	442-3525	MT Assoc. of Churches	SB 486	✓	
Don Coburn	227-8629	Self	SB 450		✓
Ronda Carpenter	899-5659	Mt Housing Providers	SB 450	✓	
LEE WARENG	273-2767				
DUANE KUAPP	" 0188				
AL PONTRELLI	422-9555	MTALU	SB 473	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 18,
1999 at 9:03 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 443, SB 472, SB 481, SB
503, 2/16/1999

Executive Action: SB 443, SB 456, SB 481, SB 486

HEARING ON SB 443

Sponsor: SEN. MIKE HALLIGAN, SD 34, Missoula

Proponents: Chief Justice Jean Turnage, Montana Supreme Court
Justice Karla Gray, Montana Supreme Court
John Connor, Attorney General's Office
William Hooks, Chief Appellate Defender

maintained that the issue of whether or not the current system is constitutional has been addressed by the Montana Supreme Court on several occasions.

{Tape : 3; Side : B; Approx. Time Counter : 11.50}

Closing by Sponsor:

SEN. ELLINGSON summarized that this bill may cause situations where the death penalty would be inappropriately imposed. He believes juries take their responsibilities seriously. This would provide a check and balance upon the imposition of a death penalty. The judge and the jury must both agree that the death penalty should be imposed.

In regard to Section 5, page 3, defense and prosecuting counsel can provide appropriate jury instructions and questionnaires which can be used by the jurors. This will clearly demonstrate the jury's conclusions and what mitigating or aggravating circumstances were brought to bear upon the jury's conclusions.

Why should Montana be one of the three states in which the responsibility for issuing a death sentence should be placed upon one person alone, the judge? He raised a concern about the responsibility that was imposed upon one individual. When society sanctions the taking of the life of one of our citizens, we have committed the gravest, the most extreme, and the most solemn act of punishment. Doesn't it make sense to permit the conscience of the community, through the jury, to be brought to bear on this highly subjective judgment. Doesn't it make sense to share the burden of this responsibility between the trial judge and the jury in our effort to achieve the fairest of all possible results.

SEN. DOHERTY was excused from the meeting.

{Tape : 3; Side : B; Approx. Time Counter : 12.00}

EXECUTIVE ACTION ON SB 486

SEN. HALLIGAN provided testimony from several individuals who were not able to attend the hearing on SB 486 in favor of the legislation: Douglas Harris, Missoula Attorney, letter, EXHIBIT(3) Leslie Halligan, Missoula Deputy County Attorney, letter, EXHIBIT(4) and Judith A. Loring, Stevensville Attorney, letter, EXHIBIT(5).

He added that he was concerned with the manner in which the bill addressed the evidence needed for a determination that a third

party have a parental right. The amendments apply to these concerns.

Ms. Lane explained that the amendments eliminated redundancy in the language.

Motion: SEN. HALLIGAN moved that SB 486 BE AMENDED - SB048601.avl, EXHIBIT(6).

Discussion:

SEN. HALLIGAN added that the amendments will give better direction on the evidence that the court needs to be able to make the finding. Section 2 contains this information.

Vote: The motion carried unanimously - 8-0.

Motion: SEN. HALLIGAN MOVED THAT SB 486 DO PASS AS AMENDED.

SEN. GRIMES remarked that when the natural parent is in absentia, it is necessary to address the situation of third party parenting. It may result in more legislation for fine tuning in the future. This is an exciting opportunity and he is pleased that this legislation is taking the lead in this area. He supports the bill with the caveat that it will be watched very carefully.

SEN. HALLIGAN withdrew his motion.

{Tape : 4; Side : A; Approx. Time Counter : 12.04}

Motion/Vote: SEN. HALLIGAN moved that SB 486 BE AMENDED BY STRIKING THE WORDS "OR FAILING TO PROVIDE SUPPORT FOR A CHILD" ON PAGE 2, (4). Motion carried unanimously - 8-0.

Motion: SEN. HALLIGAN moved that SB 486 DO PASS AS AMENDED.

Discussion:

SEN. GRIMES asked for clarification of the fitness standard being removed from the original bill. Ms. Lane explained that the original bill referenced unfitness or abuse and neglect in an attempt to recognize that there are those situations in addition to the types of situations being addressed in this bill. She removed the references to unfitness or ability to parent because they are clearly covered in Title 41, Chapter 3, the abuse and neglect statutes.

Vote: Motion carried unanimously - 8-0.

HARRIS & CALLAGHAN

ATTORNEYS AT LAW

An Association Including Professional Corporations

Douglas Donald Harris, P.C.
Kevin R. Callaghan, P.C.
Spencer T. MacDonald

Phone: (406) 728-6600
Facsimile: (406) 728-6679

February 17, 1999

VIA FACSIMILE
(406) 444-3036

Senator Grosfield and
Members of the Judiciary Committee
1999 Montana State Legislature
State Capitol

BEST COPY
AVAILABLE

Dear Senator Grosfield:

Please accept this letter as my recommendation for approval of Senate Bill No. 486, introduced by Senator Mike Halligan in the 1999 Montana Legislature.

Having practiced law for about 20 years and licensed in Montana and Washington, the bill is a welcome safe harbor to many, many difficult issues in family law. All too often, counsel and the Court are faced with totally imperfect choices as to appropriate parents. Frequently, both parents are borderline unfit, and if not unfit, incapable of acting in the best interests of the child. Senate Bill No. 486 envisions a grant of standing to persons who have an abiding love and care for the child, but have no legal nexus. Often times, this person is a grandparent, but in my experience, it has also been an older brother or sister, an uncle, an aunt, a step-parent, or any other number of decent persons who live responsible lives, care deeply for a troubled child, and wish to preserve, protect and nurture the child, but can't because of a lack of legal standing.

Having practiced in this area for some time, Senate Bill No. 486 is not going to put the child with a stranger, or allow a predatory or unfit person to gain an intimate relationship with an innocent child. Rather, it will place the matter where it belongs: with the district courts to decide among adults who really is the best choice for caring for the child. This also takes family services in the State of Montana out of the mix, which in my experience, has been frequently manipulated by parties—one person attempting to smear the other person with a claim of abuse. Making it a private action by a person granted legal status is the best result and I think the bill accomplishes that.

Very truly yours,
HARRIS & CALLAGHAN

Douglas Harris (dp)

Douglas Harris, P.C.

DDH/dmp

MISSOULA
COUNTYFRED VAN VALKENBURG
COUNTY ATTORNEY
200 W. BROADWAY
MISSOULA, MONTANA 59802-4292

(406) 523-4737

FAX # (406) 523-4915

February 17, 1999

Senator Lorents Grosfield
Chairman, Judiciary Committee
State Capitol
Helena, MT 59620

RE: Senate Bill 486

JUDICIAL COUNCIL

CASE NO. 4

DATE 2-18-99

FILE NO. SB 486

BEST COPY
AVAILABLE

Dear Senator Grosfield and Members of the Judiciary Committee:

This letter is written in support of Senate Bill 486, which provides for a parenting interest or visitation to be granted to a third party, when a biological parent is either unable, unwilling or inappropriate to serve as the child's care provider.

As a Deputy County Attorney in Missoula more than half of my the work is devoted to matters involving child abuse or neglect. Given the recent changes to Montana law, it has become apparent that termination of parental rights has become a primary focus of our work. Termination of parental rights appears to be most common when families have issues regarding substance abuse (both alcoholism and drug dependency), mental illness or developmental disability, which prevents a parent's ability to consistently provide for the child's basic needs. This also can occur when a child is suffering from a significant emotional illness or disabling condition and cannot be cared for by the biological parent because of the severity of the child's condition. In many of these circumstances, a significant bond exists between parent and child, but despite all efforts, the parent(s) cannot meet the basic needs of the child, particularly when the services to a family for reunification cannot extend beyond 18 months. Termination of parental rights in these cases is an extreme measure and often severs positive bonds between the parent and child, that should be maintained. S.B. 486 would prevent the need to terminate parental rights and place children in permanent foster care in these situations. It would allow placement of a child with third parties, often extended family members, if determined appropriate by the District Court, while maintaining positive contact with the natural parent.

Since the State cannot alone monitor the welfare of every child in the Montana, S.B. 486 would allow families or other interested third parties who have an existing parent-child relationship to pursue appropriate intervention on behalf of a child, without the State's involvement, by requesting a parenting relationship or through visitation. Then the District Court can determine an appropriate parenting plan for the child after consideration of the relevant facts presented

Letter in Support of SIB. 486 - Page 2

by the parties. This is not allowed under current law. Given the complexity and diversity of families and children, some provision should be sanctioned to allow families to intervene when parent has not or cannot consistently provide for the basic needs of the child.

In my training, I have become aware of an ever increasing number of states that have enacted changes in parenting laws so that courts can consider the best interests of children when issues of placement and visitation are raised by the parties. Many courts have acknowledged that the constitutional protection given to parents is dependent, not simply on the biological connection between a parent and child, but on the day-to-day, emotional and custodial relationship that a child needs with an adult. S.B. 486 would continue the protections given to parents, but would allow Montana courts to balance the constitutional rights that exist both for parents and for children when making parenting decisions. It is a necessary addition to our State laws.

Thank you for your consideration of S.B. 486.

Sincerely,

FRED VAN VALKENBURG
COUNTY ATTORNEY


Leslie Halligan
Deputy County Attorney

Enclosure

BEST COPY
AVAILABLE

COMMITTEE NO.

5

DATE

2-18-99

CL. NO.

SB 486

Judith A. Loring**Attorney at Law**

P.O. Box 4 - 504 Main Street
Stevensville, Montana 59870
Telephone (406) 777-5414
FAX (406) 777-5476

February 17, 1999

BEST COPY
AVAILABLE

Senator Lorentz Grosfield
Chair, Judiciary Committee
and Members of Judiciary Committee

faxed to: (406) 444-3036

Attention: Valencia or Mike Halligan

Re: SB 486

I am in support of SB 486 which revises the laws regarding third party standing in custody issues and which would require custody to be determined in the children's best interests. This bill is required.

I have been involved in a case which began in 1991 and only recently ended after appeal. I represented the third parties, eventually determined to have no biological relationship to the two boys involved. However, these third parties had actual physical custody of both children since 12/90 after their mother was murdered. At that time, the mother's husband was presumed to be the natural father which DNA testing later proved not to be true. The biological father sought custody although he had never established a relationship with either child, had never had custody of either and was a complete stranger to them. He had been in prison and did not have a very good record.

The Montana Supreme Court eventually granted the father's request, overturning Judge Larson of the Fourth Judicial District who had found standing in our favor and determined the kids' best interests would be served with remaining where they were, with visitation to the biological father with conditions.

The children suffer from post traumatic stress syndrome as a result of witnessing their mother's murder. Their presumed father then died. The therapist involved was of the opinion that if custody was changed again, if the kids were sent out of state to live with an unknown biological parent, that they would have extreme problems in ever bonding with anyone again, including future wives, etc.. However, the Supreme Court determined the third parties did not have "standing" because M.C.A. §40-4-211 and §40-4-221 talked about "custody", which meant something different than physical custody. If the law was changed so as to grant standing to third parties who have physical possession, for whatever reason, then these boys could have been protected and their lives not torn asunder.

Fax to Judicial Committee
Re: SB 486
February 17, 1999
Page 2

There needs to be something in the law which allows third parties to step in to protect the best interests of children when the state is not involved in abuse/neglect proceedings. My case fit exactly into the cracks in the existing laws. There was ultimately nothing the third parties, who had acted as psychological/pseudo-parents for over 8+ years, could do to protect the children's established life.

I would also like to see changes to the laws so that children's rights are given more protection. Children in Montana should also have constitutionally protected rights to family, to an established home, which rights should be taken into account. A person who has only a biological connection, but nothing more, should not be able to allege the fundamental nature of this biological parent's constitutional right to the detriment of the children and their rights.

Therefore, I am in **SUPPORT** of Senate Bill #486 and urge passage.

Sincerely,


Judith A. Loring

BEST COPY
AVAILABLE

Amendments to Senate Bill No. 486
1st Reading Copy

Requested by Senator Mike Halligan

For the Senate Judiciary Committee

Prepared by Valencia Lane
February 17, 1999

1. Page 4, line 13 through line 14.

Strike: "Parenting and visitation matters between natural parent
and third party"

Insert: "Rights of parents and children -- policy -- findings"

2. Page 4, line 19 through line 20.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

3. Page 4, line 21.

Following: "finds"

Insert: ":"

(a) "

4. Page 4, line 23.

Following: "parenthood"

Strike: ". A"

Insert: "; and

(b) that a"

5. Page 4, line 25.

Following: "when"

Strike: "any of the following exist:"

Insert: "the parent's conduct is contrary to the child-parent
relationship."

6. Page 4, line 26 through page 5, line 13.

Strike: line 26 on line 4 through page 5, line 13

Insert: "NEW SECTION. Section 4. Parenting and visitation
matters between natural parent and third party. (1) In cases when
a nonparent seeks a parental interest in or visitation with a
child, the provisions of this chapter apply unless a separate
action is pending under Title 41, chapter 3.

(2) A court may award a parental interest to a person other
than a natural parent when:

(a) it is shown by clear and convincing evidence that the natural parent has engaged in conduct that is contrary to the child-parent relationship; and

(b) the nonparent has established with the child a child-parent relationship, as defined in 40-4-211, and it is in the best interests of the child to continue that relationship.

(3) For purposes of an award of visitation rights under this section, a court may order visitation based on the best interests of the child.

(4) For purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child or failing to provide support for a child is conduct that is contrary to the parent-child relationship.

(5) It is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section."

Renumber: subsequent section

7. Page 5, line 15.

Strike: "[Section 3] is"

Insert: "[Sections 3 and 4] are"

8. Page 5, line 17.

Strike: "[section 3]"

Insert: "[sections 3 and 4]"

- END -

Unofficial Draft Copy

As of: February 18, 1999 (7:43AM)

LC9999

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Rights of parents and children -- public policy -- findings. (1) It is the policy of the state of Montana:

(a) to recognize the constitutionally protected rights of parents and the integrity of the family unit;

(b) to recognize a child's constitutionally protected rights, including all fundamental rights unless those rights are specifically precluded by laws that enhance their protection; and

(c) to ensure that the best interests of the child are met in parenting proceedings.

(2) The legislature finds:

(a) that while it is in the best interests of a child to maintain a relationship with a natural parent, a natural parent's inchoate interest in the child requires constitutional protection only when the parent has demonstrated a timely commitment to the responsibilities of parenthood; and

(b) that a parent's constitutionally protected interest in the parental control of a child should yield to the best interests of the child when the parent's conduct is contrary to

Unofficial Draft Copy

As of: February 18, 1999 (7:43AM)

LC9999

the child-parent relationship.

NEW SECTION. Section 2. Parenting and visitation matters between natural parent and third party. (1) In cases when a nonparent seeks a parental interest in or visitation with a child, the provisions of this chapter apply unless a separate action is pending under Title 41, chapter 3.

(2) A court may award a parental interest to a person other than a natural parent when:

(a) it is shown by clear and convincing evidence that the natural parent has engaged in conduct that is contrary to the child-parent relationship; and

(b) the nonparent has established with the child a child-parent relationship, as defined in 40-4-211, and it is in the best interests of the child to continue that relationship.

(3) For purposes of an award of visitation rights under this section, a court may order visitation based on the best interests of the child.

(4) For purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child or failing to provide support for a child is conduct that is contrary to the parent-child relationship.

(5) It is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section.

- END -

DATE 2-18-99

[illegible]



SENATE STANDING COMMITTEE REPORT

February 18, 1999

Page 1 of 2

Mr. President:

We, your committee on Judiciary report that Senate Bill 486 (first reading copy -- white) do pass as amended.

Signed:

A handwritten signature in cursive script, reading "Lorents Grosfield".

Senator Lorents Grosfield, Chair

And, that such amendments read:

1. Page 4, line 13 through line 14.

Strike: "Parenting and visitation matters between natural parent and third party"

Insert: "Rights of parents and children -- policy -- findings"

2. Page 4, line 19 through line 20.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

3. Page 4, line 21.

Following: "finds"

Insert: ":

(a)"

4. Page 4, line 23.

Following: "parenthood"

Strike: ". A"

Insert: "; and

(b) that a"

5. Page 4, line 25.

Following: "when"

Strike: "any of the following exist:"

Insert: "the parent's conduct is contrary to the child-parent

Committee Vote:

Yes 8, No 0.

401348SC.srf

- SB 481** SPONSOR: Thomas, Fred SHORT TITLE: Extend custody powers to juvenile home arrest officers
REFERRED ON: 03/02/1999 HEARD ON: 03/09/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred -- VOTE: 17 - 2
FINAL DISPOSITION 04/16/1999 Chapter Number Assigned
-
- SB 486** SPONSOR: Halligan, Mike SHORT TITLE: Revise law relating to parenting between natural parent and third parties
REFERRED ON: 03/02/1999 HEARD ON: 03/22/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 17 - 2
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- SB 503** SPONSOR: Ellingson, Jon SHORT TITLE: Revise procedure for imposing death penalty
REFERRED ON: 03/02/1999 HEARD ON: 03/11/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred -- VOTE: 10 - 9
FINAL DISPOSITION 03/29/1999 (H) 2nd Reading Concur Motion Failed; Vote: 43 - 55
-
- SB 505** SPONSOR: Grimes, Duane SHORT TITLE: Establish civil legal assistance for indigent victims of domestic violence
REFERRED ON: 03/02/1999 HEARD ON: 03/19/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 12 - 7
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- SB 506** SPONSOR: Grimes, Duane SHORT TITLE: Submit increase in plaintiff's filing fee to electors
REFERRED ON: 03/02/1999 HEARD ON: 03/18/1999
TABLED ON: 03/18/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 507** SPONSOR: Grimes, Duane SHORT TITLE: Submit increase in dissolution of marriage filing fee to electorate
REFERRED ON: 03/02/1999 HEARD ON: 03/18/1999
TABLED ON: 03/18/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 533** SPONSOR: Devlin, Gerry SHORT TITLE: Control flow of cigarettes for sale or distribution into state
BY REQUEST OF: (S) Taxation Standing Committee
REFERRED ON: 03/27/1999 HEARD ON: 03/30/1999
EXECUTIVE ACTION: 03/30/1999 Bill Concurred as Amended -- VOTE: 13 - 6
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 22, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Diana Wyatt, Vice Chairman (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 251, SB 372, SB 486,
3/15/1999

Proponents:

Kerry Newcomer, Child & Family Law Section of State Bar

{Tape : 1; Side : B; Approx. Time Counter : 37 - 108}

Mary Pippen, Montana Association of Clerks of District Court

{Tape : 1; Side : B; Approx. Time Counter : 108 - 115}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 115 - 178}

Closing by Sponsor:

Senator Halligan made closing statements.

{Tape : 1; Side : B; Approx. Time Counter : 178 - 186}

HEARING ON SB 486

Sponsor:

Senator Halligan presented SB 486.

{Tape : 1; Side : B; Approx. Time Counter : 186 - 285}

Proponents:

Kerry Newcomer, Child & Family Law Section of State Bar

{Tape : 1; Side : B; Approx. Time Counter : 285 - 330}

EXHIBIT(2)

EXHIBIT(3)

Betty Waddell, Montana Association of Churches

{Tape : 1; Side : B; Approx. Time Counter : 330 - 384}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 384 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 247}

Closing by Sponsor:

Senator Halligan made closing statements.

{Tape : 2; Side : A; Approx. Time Counter : 247 - 267}

EXECUTIVE ACTION ON SB 404

Motion/Vote: REP. SHOCKLEY moved that SB 404 BE CONCURRED IN.

Motion carried 19-1 with Jore voting no.

{Tape : 2; Side : A; Approx. Time Counter : 267 - 374}

EXECUTIVE ACTION ON SB 416

Motion: REP. YOUNKIN moved that SB 416 BE CONCURRED IN.

Motion/Vote: REP. MOLNAR moved that SB 416 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. FACEY moved that SB 416 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

{Tape : 2; Side : A; Approx. Time Counter : 374 - 451}

EXECUTIVE ACTION ON SB 233

Motion: REP. AHNER moved that SB 232 BE CONCURRED IN.

Motion/Vote: REP. ANDERSON moved that SB 232 BE AMENDED. Motion carried 19-1 with McGee voting no.

Motion: REP. ANDERSON moved that SB 232 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. NOENNIG moved that SB 232 BE AMENDED. Motion carried unanimously.

EXHIBIT(4)

Motion/Vote: REP. ANDERSON moved that SB 232 BE CONCURRED IN AS AMENDED. Motion carried 12-8 with P. Clark, Curtiss, Eggers, Gallus, Gutsche, Hurdle, Williams, and Wyatt voting no.

{Tape : 2; Side : A; Approx. Time Counter : 451 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 433}

EXECUTIVE ACTION ON SB 326

Motion: REP. FACEY moved that SB 326 BE CONCURRED IN.

Motion: REP. ANDERSON moved that SB 326 BE AMENDED.

Motion/Vote: REP. ANDERSON moved that SB 326 BE TABLED. Motion carried 12-7.

Rep. Wyatt absent, no proxy on this vote only.

EXHIBIT 2
DATE 3/22/99
486

WRIGHT TOLLIVER GUTHALS P.C.
ATTORNEYS AT LAW

10 North 27th Street • P.O. Box 1977 • Billings, Montana 59103-1977
Phone: 406-245-3071 • E-mail: lawfirm@mcn.net • Fax: 406-245-3074

March 19, 1999

Via Fax No. 406-444-3036
& U. S. Mail

IMMEDIATE ATTENTION REQUESTED

Mr. Bob Clark
Chairman, Judiciary Committee
Montana State Senate
Helena, MT 59601

Re: Senator Mike Halligan's
Bill Draft Number LC1420

BEST COPY
AVAILABLE

Dear Chairman Clark:

I am an attorney with over 20 years of experience in the area of family law. I am one of two Montana attorneys belonging to the American Academy of Matrimonial Lawyers, a national organization committed to improving the delivery of legal services to families.

I am writing to express my support of Senate Bill 486. Our Montana district courts need the ability to consider the best interests of a child when there is dispute between a non-parent, who has acted as a parent for a child, and a biological parent, who may or may not have been involved in the child's care. Our children are not chattels to be passed about between biological parents without regard for the child's needs and the child's right to remain in a family unit which meets his or her physical and emotional needs.

Recent decisions from the Montana Supreme Court have ignored the rights of the children and their caretakers in favor of biological parents, who for a variety of reasons, have not assumed the role and responsibility of parents.

I urge you and the members of your committee to approve SB486.

Very truly yours,


Virginia A. Bryan

VAB:tr

Kenneth D. Tolliver • Joel E. Guthals • Virginia A. Bryan • Susan Fisher Stevens
J. Reuss • Jeffery A. Hunnes • James W. Thompson • David Paul Wilkins



(406) 523-4737

FAX # (406) 523-4915

EXHIBIT 3
DATE 3/22/99
BY 486

March 19, 1999

Representative Bob Clark
Chairman, Judiciary Committee
State Capitol
Helena, MT 59620

RE: Senate Bill 486

BEST COPY
AVAILABLE

Dear Chairman Clark and Members of the Judiciary Committee:

This letter is written in support of Senate Bill 486, which provides for a parenting interest or visitation to be granted to a third party, when a biological parent is either unable, unwilling or inappropriate to serve as the child's care provider.

As a Deputy County Attorney in Missoula more than half of my the work is devoted to matters involving child abuse or neglect. Given the recent changes to Montana law, it has become apparent that termination of parental rights has become a primary focus of our work. Termination of parental rights appears to be most common when families have issues regarding substance abuse (both alcoholism and drug dependency), mental illness or developmental disability, which prevents a parent's ability to consistently provide for the child's basic needs. This also can occur when a child is suffering from a significant emotional illness or disabling condition and cannot be cared for by the biological parent because of the severity of the child's condition. In many of these circumstances, a significant bond exists between parent and child, but despite all efforts, the parent(s) cannot meet the basic needs of the child, particularly when the services to a family for reunification cannot extend beyond 18 months. Termination of parental rights in these cases is an extreme measure and often severs positive bonds between the parent and child, that should be maintained. S.B. 486 would prevent the need to terminate parental rights and place children in permanent foster care in these situations. It would allow placement of a child with third parties, often extended family members, if determined appropriate by the District Court, while maintaining positive contact with the natural parent.

Since the State cannot alone monitor the welfare of every child in the Montana, S.B. 486 would allow families or other interested third parties who have an existing parent-child relationship to pursue appropriate intervention on behalf of a child, without the State's involvement, by requesting a parenting relationship or through visitation. Then the District Court can determine an appropriate parenting plan for the child after consideration of the relevant facts presented

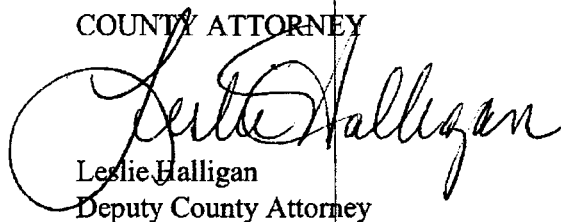
by the parties. This is not allowed under current law. Given the complexity and diversity of families and children, some provision should be sanctioned to allow families to intervene when parent has not or cannot consistently provide for the basic needs of the child.

In my training, I have become aware of an ever increasing number of states that have enacted changes in parenting laws so that courts can consider the best interests of children when issues of placement and visitation are raised by the parties. Many courts have acknowledged that the constitutional protection given to parents is dependent, not simply on the biological connection between a parent and child, but on the day-to-day, emotional and custodial relationship that a child needs with an adult. S.B. 486 would continue the protections given to parents, but would allow Montana courts to balance the constitutional rights that exist both for parents and for children when making parenting decisions. It is a necessary addition to our State laws.

Thank you for your consideration of S.B. 486.

Sincerely,

FRED VAN VALKENBURG
COUNTY ATTORNEY



Leslie Halligan
Deputy County Attorney

Enclosure

BEST COPY
AVAILABLE

HOUSE OF REPRESENTATIVE ROLL CALL

JUDICIARY

COMMITTEE

BEST COPY
AVAILABLE

DATE 3/22/99

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Robert C. Clark, chair	☒		
Dan McGee, vice chair	☒		
Diana Wyatt, vice chair			☒
Chris Ahner	☒		
Shiell Anderson	☒		
Paul Clark	☒		
Aubyn A. Curtiss	☒		
Bill Eggers	☒		
Tom Facey	☒		
Steven Gallus	☒		
Gail Gutsche	☒		
Joan Hurdle	☒		
Rick Jore	☒		
Sam Kitzenberg	☒		
Sam K. ...	☒		
Brad Molnar	☒		
Mark Noenning	☒		
Jim Shockley	☒		
Loren Soft	☒		
Carol Williams	☒		
Cindy Younkin	☒		

143

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE

3/22/99

BILL NO.

SB486

SPONSOR(S)

Mike Halligan

BEST COPY
AVAILABLE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
P	KERRY NEWCOMER	619 SW HILGARD AVE MSLA 57803	Self
P	BETTY WADDELL	100 24TH ST W BILLINGS	MT ASSOC. OF CHURCHES

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 26, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: Rep. Chris Ahner (R)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

Executive Action: SB-477-Be Concurred in, SB
481-Be Concurred in, SB 486-Be

Concurred in as amended; SB
503-Be Concurred in, SB 505-Be
Concurred in as amended; SB
463-Be Concurred in, SB 473-Be
concurred in, SB 33-Be
Concurred in; SB 36-Be
concurred in as amended

EXECUTIVE ACTION ON SB 477

Motion/Vote: REP. WILLIAMS moved that SB 477 BE CONCURRED IN.
Motion carried 16-3 with Jore, McGee, and Wyatt voting no.
(Rep. Ahner absent)
{Tape : 1; Side : A; Approx. Time Counter : 31 - 96}

EXECUTIVE ACTION ON SB 481

Motion/Vote: REP. ANDERSON moved that SB 481 BE CONCURRED IN.
Motion carried 17-2 with Jore and Wyatt voting no.
(Rep. Ahner absent)
{Tape : 1; Side : A; Approx. Time Counter : 96 - 114}

EXECUTIVE ACTION ON SB 486

Motion: REP. SHOCKLEY moved that SB 486 BE CONCURRED IN.
Rep. Molnar not present; action is postponed until later in
meeting.
{Tape : 1; Side : A; Approx. Time Counter : 114 - 125}

EXECUTIVE ACTION ON SB 503

Motion: REP. ANDERSON moved that SB 503 BE CONCURRED IN.
Motion/Vote: REP. ANDERSON moved that SB 503 BE TABLED. Motion
failed 8-11 with P. Clark, Curtiss, Eggers, Facey, Gallus,
Gutsche, Hurdle, Kitzenberg, Shockley, Williams, and Wyatt voting
aye.
(Rep. Ahner absent)
Vote: Motion that SB 503 BE CONCURRED IN carried 10-9 with
Anderson, R. Clark, Curtiss, Jore, McGee, Molnar, Noennig, Soft,
and Younkin voting no.
(Rep. Ahner absent)
{Tape : 1; Side : A; Approx. Time Counter : 125 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 171}

Motion/Vote: REP. CURTISS moved that SB 198 BE CONCURRED IN AS AMENDED. Motion failed 9-10 with R. Clark, Curtiss, Gallus, Jore, Kitzenberg, McGee, Molnar, Noennig, Soft, and Younkin voting aye. (Rep. Ahner absent)

{Tape : 3; Side : A; Approx. Time Counter : 0 - 265}

(INADVERTENTLY TAPE 2 SIDE B WAS NOT UTILIZED, AND RECORDING STARTED ON TAPE 3 SIDE A FOR SB 198.)

EXECUTIVE ACTION ON SB 486

Motion: REP. MOLNAR moved that SB 486 BE CONCURRED IN.

EXHIBIT(1)

Motion: REP. MOLNAR moved that SB 486 BE AMENDED.

Motion: REP. NOENNIG moved that SB 486-BE AMENDED; SEPARATING AMENDMENT #4 FROM REST OF AMENDMENTS. MOLNAR AMENDMENTS # 1-3 FAILED ON A VOICE VOTE. MOLNAR AMENDMENT #2 FAILED ON A VOICE VOTE. REP. MOLNAR WITHDREW HIS AMENDMENT FOR #4.

Motion/Vote: REP. NOENNIG moved that SB 198 BE AMENDED. Motion carried 19-0.

Motion/Vote: REP. MOLNAR moved that SB 486 BE CONCURRED IN AS AMENDED. Motion carried 17-2 with R. Clark and Jore voting no. (Rep. Ahner absent)

{Tape : 3; Side : A; Approx. Time Counter : 265 - 999}

{Tape : 3; Side : B; Approx. Time Counter : 0 - 172}

COMMITTEE JOINT RESOLUTION

REP. WYATT discussed and handed out a packet of information for the committee to consider for the resolution she proposes regarding the managed health care crisis that has evolved during this session.

EXHIBIT(2)

Much discussion from the members of the committee regarding what is happening currently with the Magellan Health Care Contract. Rep. Soft has been attending committee meetings and informed the committee as to the latest information.

The House Judiciary Committee voted unanimously to proceed with a Bill Draft Request. Rep. Wyatt will carry on the floor after an additional meeting with the House Judiciary Committee.

{Tape : 3; Side : B; Approx. Time Counter : 172 - 550}

{Tape : 4; Side : A; Approx. Time Counter : 0 - 28}

1
3/26/99
486

Amendments to Senate Bill No. 486
3rd Reading Copy

Requested by Representative Brad Molnar

For the House Judiciary Committee

Prepared by John MacMaster
March 24, 1999 (9:31AM)

1. Page 3, line 21.

Strike: "within" through "section,"

2. Page 4, line 24.

Strike: "demonstrated a timely commitment to"

Insert: "shown a callus disregard toward"

3. Page 5, line 20.

Following: "AWARD A"

Insert: "permanent or temporary"

4. Page 6, line 1 through line 2.

Strike: subsection (5) in its entirety

- END -

HOUSE OF REPRESENTATIVE ROLL CALL

JUDICIARY

COMMITTEE

DATE 3/26/99

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Robert C. Clark, chair	/		
Dan McGee, vice chair	/		
Diana Wyatt, vice chair	/		
Chris Ahner		/	
Shiell Anderson	/		
Paul Clark	/		
Aubyn A. Curtiss	/		
Bill Eggers	/		
Tom Facey	/		
Steven Gallus	/		
Gail Gutsche	/		
Joan Hurdle	/		
Rick Jore	/		
Sam Kitzenberg	/		
Brad Molnar	/		
Mark Noenning	/		
Jim Shockley	/		
Loren Soft	/		
Carol Williams	/		
Cindy Younkin	/		

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3-26-99

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Mark Roney.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO

SENATE BILL/AMENDMENT	AYE	NO
477	X	
481	X	
486	X	
503		X
463	X	
473		
198	X	

Rep. [Signature]

(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3/26/99

I request to be excused from the House Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with ~~Clark, Scott~~.

Vote w/ Clark - Shackley

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
SB. 477	✓	✓
SB 481	✓	
SB 486	✓	
SB 503		✓
SB 505		✓
SB 463	✓	
SB 473	✓	
SB 198		✓
SB 33	✓	
SB 22	✓	
SB 36		✓

SENATE BILL/AMENDMENT	AYE	NO

Rep. *McLean*
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE March 26, 1999

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Rep. Clark.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO

SENATE BILL/AMENDMENT	AYE	NO
477		X
481		X
with Mdhar on Amends - 486	X	(X)
503		X
505		X
463	X	
473	X	
198		X
22		X
33	(X)	
36		X

Rep. Rick Jones
(Signature)



HOUSE STANDING COMMITTEE REPORT

March 26, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on Judiciary report that Senate Bill 486 (third reading copy -- blue) be concurred in as amended.

Signed: Robert C. Clark
Representative Robert C. Clark, Chair

To be carried by Representative Brad Molnar

And, that such amendments read:

1. Page 5, line 18.

Following: "INTEREST IN"

Insert: "a child under 40-4-211"

- END -

Committee Vote:

Yes 17, No 2.

681418SC.ham

3/27/99
3-26



AN ACT REVISING THE LAWS RELATING TO PARENTING MATTERS BETWEEN NATURAL PARENTS AND THIRD PARTIES; AUTHORIZING COURTS TO MAKE A DETERMINATION THAT A PARENTAL INTEREST OR VISITATION RIGHT MAY BE AWARDED TO A THIRD PARTY WHEN THE PARENT'S CONDUCT IS CONTRARY TO A CHILD-PARENT RELATIONSHIP AND THE DETERMINATION SERVES THE BEST INTERESTS OF THE CHILD; AND AMENDING SECTIONS 40-4-211 AND 40-4-221, MCA.

WHEREAS, it is undisputed that parents have a fundamental right to autonomy in child-rearing decisions; and

WHEREAS, the United States Supreme Court has long recognized a constitutionally protected interest of parents to raise their children without state interference; and

WHEREAS, the liberty interest guaranteed by the 14th amendment to the United States Constitution includes freedom to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home, and to bring up children; and

WHEREAS, the freedom of personal choice in matters of family life is a fundamental liberty interest protected by the 14th amendment to the United States Constitution; and

WHEREAS, the integrity of the family unit has found protection in the due process clause of the 14th amendment, the equal protection clause of the 14th amendment, and the 9th amendment; and

WHEREAS, the Montana Supreme Court has recognized the constitutionally protected rights of natural parents to parent their children; and

WHEREAS, the Montana Legislature recognizes that the careful protection of parental rights is not merely a matter of legislative grace but is constitutionally required; and

WHEREAS, the Montana Constitution recognizes the constitutional rights of children; and

WHEREAS, Article II, section 15, of the Montana Constitution provides that the rights of persons under 18 years of age shall include but not be limited to all the fundamental rights of Article II, unless specifically precluded by law which enhances the protection of the persons; and

WHEREAS, these fundamental rights include but are not limited to freedom; pursuing life's basic

necessities, enjoying and defending life and liberty, and seeking safety, health, and happiness in lawful ways and the rights of individual dignity and privacy; and

WHEREAS, the Legislature finds that there are times when the rights of parents must be balanced against the rights of children; and

WHEREAS, the Legislature further finds that the courts need direction and authority to consider the best interests of children in parenting and visitation matters; and

WHEREAS, the Legislature finds it is appropriate to establish standards and direction for resolving these issues.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-211, MCA, is amended to read:

"40-4-211. Jurisdiction -- commencement of parenting proceedings. (1) A court of this state competent to decide parenting matters has jurisdiction to make a parenting determination by initial or amended decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceedings and the child is absent from this state because of the child's removal or retention by any person and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and the parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine parenting of the child; and

(ii) it is in the child's best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a parenting determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine parenting of the child.

(4) A parenting plan proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for parenting in the county in which the child is permanently resident or found; or

(b) by a person other than a parent if the person has established a child-parent relationship with the child, by filing a petition for parenting in the county in which the child is permanently resident resides or is found, ~~but only if the child is not physically residing with one of the child's parents.~~

(5) Notice of a parenting proceeding must be given to the child's parent, guardian, caretaker, those persons with whom the child is physically residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

(6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that exists or did exist, in whole or in part, preceding the filing of an action under this section, in which a person provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline and which relationship continues or existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs."

Section 2. Section 40-4-221, MCA, is amended to read:

"40-4-221. Determination of child's care upon death of parent. (1) Upon the death of a parent,

one or more parties named in subsection (2) may request a parenting plan hearing. The surviving parent must be a party in any proceeding brought under this section.

(2) Upon the death of a parent, any of the following parties may request a parenting plan hearing:

- (a) the natural parent;
- (b) the surviving spouse of the deceased parent;
- (c) a person nominated by the will of the deceased parent;
- (d) any person nominated by the child if the child is at least 12 years old;
- (e) any other person if that person has actual physical control over the child;
- (f) a person who has established with the child a child-parent relationship, as defined in

40-4-211(6);

~~(f)~~(g) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of a parenting plan is governed by this part."

Section 3. Rights of parents and children -- policy -- findings. (1) It is the policy of the state of Montana:

- (a) to recognize the constitutionally protected rights of parents and the integrity of the family unit;
- (b) to recognize a child's constitutionally protected rights, including all fundamental rights unless those rights are specifically precluded by laws that enhance their protection; and
- (c) to ensure that the best interests of the child are met in parenting proceedings.

(2) The legislature finds:

- (a) that while it is in the best interests of a child to maintain a relationship with a natural parent, a natural parent's inchoate interest in the child requires constitutional protection only when the parent has demonstrated a timely commitment to the responsibilities of parenthood; and
- (b) that a parent's constitutionally protected interest in the parental control of a child should yield to the best interests of the child when the parent's conduct is contrary to the child-parent relationship.

Section 4. Parenting and visitation matters between natural parent and third party. (1) In cases when a nonparent seeks a parental interest in a child under 40-4-211 or visitation with a child, the

provisions of this chapter apply unless a separate action is pending under Title 41, chapter 3.

(2) A court may award a parental interest to a person other than a natural parent when it is shown by clear and convincing evidence that:

(a) the natural parent has engaged in conduct that is contrary to the child-parent relationship; and

(b) the nonparent has established with the child a child-parent relationship, as defined in 40-4-211, and it is in the best interests of the child to continue that relationship.

(3) For purposes of an award of visitation rights under this section, a court may order visitation based on the best interests of the child.

(4) For purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child is conduct that is contrary to the parent-child relationship.

(5) It is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section.

Section 5. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2, apply to [sections 3 and 4].

- END -